

Introduced by Senator Simitian

February 17, 2011

An act to add Section 11110 to the Health and Safety Code, relating to nonprescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, as introduced, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law prohibits a manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing a specified substance, including ephedrine and pseudoephedrine, to a person under 18 years of age, except as specified. A first violation of this provision is a misdemeanor. Existing law further regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction for any person in an over-the-counter sale to, without a prescription, willfully and knowingly deliver to a person under 18 years of age a nonprescription drug containing dextromethorphan. The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction, subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the provisions prohibiting the sale of dextromethorphan to minors. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11110 is added to the Health and Safety
2 Code, to read:
3 11110. (a) It shall be an infraction for any person in an
4 over-the-counter sale to, without a prescription, willfully and
5 knowingly deliver to a person under 18 years of age a drug,
6 material, compound, mixture, preparation, or substance containing
7 any quantity of dextromethorphan (the dextrorotatory isomer of
8 3-methoxy-N-methylmorphinan, including its salts, but not
9 including its racemic or levorotatory forms).
10 (b) (1) It shall be prima facie evidence of a violation of this
11 section if the person making the sale does not require and obtain
12 proof of age from the purchaser, unless from the purchaser's
13 outward appearance the person making the sale would reasonably
14 presume the purchaser to be 25 years of age or older.
15 (2) For the purposes of this section, "proof of age" means any
16 document issued by a governmental agency that contains a
17 description or photograph of the person and gives the person's
18 date of birth, including a passport, military identification card, or
19 driver's license.
20 (c) It shall be an affirmative defense to a violation of this section
21 if the defendant proves, by a preponderance of the evidence, all
22 of the following:
23 (1) The person making the sale required and obtained proof of
24 age from the purchaser.
25 (2) The purchaser falsely represented his or her age by the use
26 of a false, forged, or altered document.
27 (3) The appearance of the purchaser would lead an ordinary and
28 prudent person to believe that the purchaser was at least 18 years
29 of age.
30 (4) The sale was made in good faith and in reliance upon the
31 appearance and representation of proof of age of the purchaser.
32 (d) (1) Notwithstanding any other provision of this section, a
33 retail clerk who fails to require and obtain proof of age from the

1 purchaser shall not be guilty of an infraction pursuant to
2 subdivision (a), subject to any civil penalties, or subject to any
3 disciplinary action or discharge by his or her employer.

4 (2) This subdivision shall not apply to a retail clerk who is a
5 willful participant in an ongoing criminal conspiracy to violate
6 this section.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.